ALPHEUS

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket No. 04-313, CC Docket No. 01-338;
SBC's Blocking of CLEC Fiber Self-Deployment

Dear Ms. Dortch:

On several occasions, including in both its comments and reply comments, Alpheus Communications, L.P. has impressed on the Commission the importance of a rational transition period, should it determine that a CLEC is no longer impaired without UNE dark fiber. Alpheus uses a significant amount of UNE dark fiber in its state of the art network and has focused its transition discussion primarily on UNE dark fiber because replacing UNE dark fiber requires significant time to deploy alternate facilities. We write to bring to your attention a current situation clearly showing the need for the Commission to adopt a well defined transition plan.

As Envisioned by the Act: Alpheus Deploys Its Own Fiber

After extended, unsuccessful commercial negotiations with SBC during the spring and summer of 2004, Alpheus has continued its efforts to remove SBC UNE dark fiber from its network. Alpheus is continuing to self deploy where it has finally aggregated sufficient traffic to justify pulling its own fiber. For three central offices in Dallas, Alpheus has fully mapped fiber routes and prepared to pull its own fiber to the zero manhole of the central office ("CO") at considerable expense. Alpheus submitted to SBC the proper applications to pull that fiber into the CO for termination in the Alpheus "Dedicated Space" according to its ICA and the applicable collocation tariff. Since Alpheus did not have prior experience with filing a collocation application to bring in its own transport fiber, Alpheus submitted test applications to SBC in June of 2004 and SBC subsequently approved those applications. Alpheus submitted its actual applications in September of 2004; SBC accepted those applications and the payment of the contractual 50% deposits from Alpheus.

As SBC requires, Alpheus submitted these applications simply to have SBC pull the Alpheus fiber the short distance from the SBC zero man-hole right outside the CO (where Alpheus is required to leave the coiled surplus fiber for SBC technicians to bring inside the CO) into the Alpheus collocation rack (with the actual terminations to be performed by an SBC-approved tier one vendor). For this simple fiber pull, SBC requires the CLEC to wait up to 60 days.

SBC Now Refuses to Allow Alpheus' Self-Deployment of Fiber

Despite Alpheus extensive preparation and SBC's acceptance of the applications and Alpheus' deposits, SBC on October 28, 2004 notified Alpheus that the SBC "network group" refused to perform the work (despite the fact that SBC has pre-existing processes for connecting CLEC fiber to such virtually collocated facilities). Since then, a month of negotiation has ensued, with SBC now orally proposing an alternative architecture which increases both Alpheus and SBC costs exponentially, introduces multiple points of failure within each CO, increases power loss per CO by 6 to 8 times and reduces engineering flexibility. The SBC "design" unnecessarily places additional burdens on SBC in terms of cost and labor — compounding inefficiency for all parties. The details supporting this alternative architecture, and applicable pricing, have only been communicated orally, and remain under discussion. We are hopeful that the matter can be resolved short of any official action by the Enforcement Bureau, but instead bring this situation to the Commission's attention as evidence of how difficult the transition from UNE dark fiber to self provided facilities can be even when both parties are theoretically willing, and mutually supportive of the self-provisioning of Alpheus fiber to the Alpheus equipment inside the CO.

The fact remains that into the third month after Alpheus first placed a request to pull its own fiber into its collocation arrangements to replace SBC UNE dark fiber transport, SBC has not provided Alpheus with a process for proceeding and is still "studying" the matter internally. Moreover, even when SBC decides to pull Alpheus' fiber, it will still have 60 days to do so. One minuscule step in the self-provisioning process and the wheels of progress come to a screeching halt.

It is now December, and Alpheus feels it is necessary to bring this matter to the Commission's attention due to the passage of time and the redundancy of cost Alpheus has incurred as we continue to pay monthly for UNE dark fiber that we could have returned to SBC months ago.

While Alpheus still believes that a multi-year transition for UNE dark fiber is absolutely necessary, Alpheus would support a "milestone-based" approach that would incentivize the ILECs to move quickly and responsively to CLEC requests to transition from UNE dark fiber to self-deployed facilities. Milestones should include receipt of relevant governmental or private authorizations, equal access to ILEC duct information,

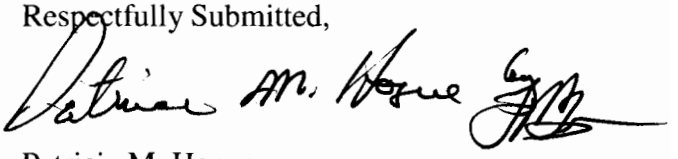
receipt of rodded, roped and ready duct from the ILEC, and the ILEC timely connecting CLEC fiber to the CLEC collocation facilities.

Facility Based UNEs Require Real Transition Time to Prevent Nationwide Telecommunications Disruption

Dark fiber is the most "facility based" UNE, which makes a rational transition mechanism so important. Unlike other UNEs, dark fiber has no Special Access Tariff substitute and cannot be readily purchased at the wholesale level. To replace UNE dark fiber then, a CLEC must typically obtain financing to deploy its own fiber and then develop a network design based on actual cable placement that in most cases requires physically "walking" the new cable route. Then, local and state permits must be acquired, a process that takes months to complete (assuming no moratorium is in place). Finally, the CLEC could start pulling fiber through preexisting duct, physically trenching the entire route through city streets, deploying fiber via aerial cable or, in most cases, using a combination of the methods mentioned.. Even after the CLEC fiber is in place, hot cuts from UNE dark fiber to self-deployed fiber require customer coordination, often within narrow time constraints outlined in customer contracts. Without a rational transition period that accounts for the time intensive nature of these physical realities, a network using UNE dark fiber, once deemed non-impaired for UNE purposes, will simply be taken down.

Importantly, Alpheus' network and the networks of other carriers using dark fiber UNEs carry millions of customer voice calls and billions of bytes of data. With no transition mechanism (as the ILECs seek), the ILECs will simply pull the plug on these networks, leaving consumers and businesses across the country without phone or data service. The Act could not have envisioned this type of massive infrastructure disruption and the Commission must not allow it. Common sense dictates that each UNE, once it is being phased out, should be accorded a proper transition procedure that reflects the physical realities of the marketplace as well as the potential time delays in building separate fixed and sunk cost infrastructure. CLECs with lit UNEs can simply pay high special access prices to keep their traffic flowing; CLECs using UNE dark fiber cannot, and thus need a transition period that takes into consideration the enormous task of self-provisioning alternative fiber facilities. Additionally, as noted above, since the ILECs typically control the timing (or delay) of alternative fiber because they control essential ducts and poles, a dark fiber transition mechanism should be milestone based, and not simply time based. This will maximize true cooperation on both sides and effectuate the process in the most efficient manner

Respectfully Submitted,



Patricia M. Hogue
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Alpheus Communications, L.P.

cc: Honorable Michael K. Powell
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
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